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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **Chris Langer,**

17 Plaintiff,

18 v.

19 **Directbuy Home Improvement,
20 Inc.,** a Delaware Corporation; and
Does 1-10,

21 Defendants.

22 **Case No.**

23 **Complaint For Damages And
Injunctive Relief For Violations
Of:** American's With Disabilities
Act; Unruh Civil Rights Act

24 Plaintiff Chris Langer ("Plaintiff") complains of Directbuy Home
Improvement, Inc., a Delaware Corporation; and Does 1-10 ("Defendants"),
and alleges as follows:

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26
27
28 **PARTIES:**

1. Plaintiff is a disabled individual and a member of a protected class of
persons under the Americans with Disabilities Act. Plaintiff suffers from
Delayed Endolymphatic Hydrops (DEH) which has caused permanent partial
hearing loss. He utilizes a variety of assistive listening devices in his day to day
life, including hearing aids and headphones to compensate, though this still
does not enable him to receive complete aural communication. When

1 consuming audio content such as movies or tutorials on the internet he turns
2 on closed captioning in order to comprehend all of the content.

3 2. Defendant Directbuy Home Improvement, Inc. owned or operated the
4 Directbuy Home Improvement, Inc. located throughout California, including
5 stores in San Diego County and San Jose County, in August 2020.

6 3. Defendant Directbuy Home Improvement, Inc. owns and/or operates
7 the Directbuy Home Improvement, Inc. located throughout California,
8 including stores in San Diego County and San Jose County currently.

9 4. Defendant Directbuy Home Improvement, Inc. owned or operated the
10 Directbuy Home Improvement, Inc. website, with a root domain of:
11 <https://www.zgallerie.com/>, and all related domains, sub-domains and/or
12 content contained within it, (“Website”) in August 2020.

13 5. Defendant Directbuy Home Improvement, Inc. owns or operates the
14 Website currently.

15 6. Defendant Directbuy Home Improvement, Inc. owned or operated its
16 Youtube channel in August 2020.

17 7. Defendant Directbuy Home Improvement, Inc. owns or operates its
18 Youtube channel currently.

19 8. Plaintiff does not know the true names of Defendants, their business
20 capacities, their ownership connection to the property and business, or their
21 relative responsibilities in causing the access violations herein complained of,
22 and alleges a joint venture and common enterprise by all such Defendants.
23 Plaintiff is informed and believes that each of the Defendants herein,
24 including Does 1 through 10, inclusive, is responsible in some capacity for the
25 events herein alleged, or is a necessary party for obtaining appropriate relief.
26 Plaintiff will seek leave to amend when the true names, capacities,
27 connections, and responsibilities of the Defendants and Does 1 through 10,
28 inclusive, are ascertained.

1 **JURISDICTION & VENUE:**

2 9. The Court has subject matter jurisdiction over the action pursuant to 28
3 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
4 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

5 10. This court has supplemental jurisdiction over Plaintiff’s non-federal
6 claims pursuant to 28 U.S.C. § 1337 because Plaintiff’s Unruh claims are
7 formed from the same case and/or controversy and are related to Plaintiff’s
8 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

9 11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b). Defendant
10 is subject to personal jurisdiction in this District due to its business contacts
11 with the District.

12 **FACTUAL ALLEGATIONS:**

13 12. Plaintiff suffers from hearing loss and is a member of a protected class
14 under the ADA.

15 13. Plaintiff relies on subtitles and closed captioning to hear audio in
16 recorded content.

17 14. Directbuy Home Improvement, Inc. operates “Home Décor and
18 Furniture” facilities throughout California, open to the public, places of public
19 accommodation, and business establishments.

20 15. Directbuy Home Improvement, Inc. offers videos on its Website to
21 induce customers to purchase its goods and to provide ideas on how to best use
22 them. Websites and videos are some of the facilities, privileges, or advantages
23 offered by Defendants to patrons of Directbuy Home Improvement, Inc.

24 16. Plaintiff was a prospective customer who wished to access Defendant’s
25 goods and services.

26 17. Plaintiff visited the Website in August 2020 to confirm the business was
27 open, review any policies regarding customer safety, and look for information

1 about the company and its products.

2 18. When Plaintiff attempted to view video content on the Website, he
3 discovered that the videos lacked closed captioning, which made him unable
4 to fully understand and consume the contents of the videos.

5 19. Plaintiff experienced difficulty and discomfort in attempting to view
6 videos including: "Jessi - New Home; Art Makeover; Bedroom Makeover". As
7 a result of this inaccessibility he was deterred from further use of the Website.

8 20. Currently, the Defendants either fail to provide an accessible website or
9 Defendants have failed to maintain in working and useable conditions those
10 website features required to provide ready access to persons with disabilities.

11 21. Despite multiple attempts to access the Website using Plaintiff's
12 computer, Plaintiff has been denied the full use and enjoyment of the facilities,
13 goods and services offered by Defendants as a result of the accessibility
14 barriers.

15 22. Plaintiff personally encountered accessibility barriers and has actual
16 knowledge of them.

17 23. By failing to provide an accessible website, the defendants denied
18 Plaintiff full and equal access to the facilities privileges or advantages offered
19 to their customers.

20 24. Plaintiff has been deterred from returning to the website as a result of
21 these prior experiences.

22 25. The failure to provide accessible facilities created difficulty and
23 discomfort for the Plaintiff.

24 26. If the Website had been constructed equally accessible to all individuals,
25 Plaintiff would have been able to navigate the website and avail himself of its
26 goods and/or services.

27 27. Additionally, Plaintiff is a tester in this litigation and seeks future
28 compliance with all federal and state laws. Plaintiff will return to the Website

1 to avail himself of its goods and/or services and to determine compliance with
2 the disability access laws once it is represented to him that the Directbuy
3 Home Improvement, Inc. and Website are accessible.

4 28. Plaintiff is currently deterred from doing so because of Plaintiff's
5 knowledge of the existing barriers and uncertainty about the existence of yet
6 other barriers on the Website. If the barriers are not removed, Plaintiff will
7 face unlawful and discriminatory barriers again.

8 29. The barriers identified above violate easily accessible, well-established
9 industry standard guidelines for making digital content accessible to people
10 with hearing-impairments to access websites. Given the prevalence of
11 websites that have implemented these standards and created accessible digital
12 content, it is readily achievable to construct an accessible website without
13 undue burden on Directbuy Home Improvement, Inc. or a fundamental
14 alteration of the purpose of the Website.

15 30. Compliance with W3C Web Content Accessibility Guidelines
16 ("WCAG") 2.0 AA standards are a viable remedy for these deficiencies and a
17 standard that has been adopted by California courts for website accessibility.

18 31. It's been established that failure to remove inaccessible website
19 conditions violates the ADA and California law and requiring compliance with
20 industry access standards is a remedy available to the plaintiff.

21 32. The website content was intentionally designed, and based on
22 information and belief, it is the Defendants', policy and practice to deny
23 Plaintiff access to the website, and as a result, deny the goods and services that
24 are otherwise available to patrons of Directbuy Home Improvement, Inc.

25 33. Due to the failure to construct and operate the website in line with
26 industry standards, Plaintiff has been denied equal access to Defendant's
27 stores and the various goods, services, privileges, opportunities and benefits
28 offered to the public by Directbuy Home Improvement, Inc.

1 34. Closed captioning is supported by numerous third party hosting
2 companies, including the one chosen by Defendants, and can be provided at
3 little cost, sometimes free or mere dollars per minute of video content.

4 35. Given the nature of the barriers and violations alleged herein, the
5 plaintiff alleges, on information and belief, that there are other violations and
6 barriers on the Website that relate to his disability. In addition to the barriers
7 he personally encountered, Plaintiff intends to seek removal of all barriers on
8 the Website that relate to his disability. See *Doran v. 7-Eleven* (9th Cir. 2008)
9 524 F.3d 1034 (holding that once a plaintiff encounters one barrier, they can
10 sue to have all barriers that relate to their disability removed regardless of
11 whether they personally encountered the barrier).

12 36. Plaintiff will amend the complaint, to provide further notice regarding
13 the scope of the additional demanded remediation in the event additional
14 barriers are uncovered through discovery. However, please be on notice that
15 the plaintiff seeks to have all barriers related to his disability remedied.

16

17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
18 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 37. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint. Defendant is a public accommodation with the definition of Title
23 III of the ADA, 42 USC § 12181.

24 38. The website provided by the Defendant is a service, privilege or
25 advantage of Directbuy Home Improvement, Inc. “Home Décor and
26 Furniture” facility.

27 39. When a business provides services such as a website, it must provide an
28 accessible website.

1 40. Here, access to an accessible website has not been provided. A failure to
2 provide an accessible website is unlawful discrimination against persons with
3 disabilities.

4 41. Under the ADA, it is an act of discrimination to fail to ensure that the
5 privileges, advantages, accommodations, facilities, goods and services of any
6 place of public accommodation is offered on a full and equal basis by anyone
7 who owns, leases, or operates a place of public accommodation. *See:* 42 U.S.C.
8 § 12182(a). Discrimination is defined, *inter alia*, as follows: “A failure to make
9 reasonable modifications in policies, practices, or procedures, when such
10 modifications are necessary to afford goods, services, facilities, privileges,
11 advantages, or accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those services and
13 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

14 42. Here, the failure to ensure that the accessible facilities were available
15 and ready to be used by the plaintiff is a violation of the law.

16 43. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
17 set forth and incorporated therein, Plaintiff requests relief as set forth below.

18

19 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
20 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
21 Code § 51-53.)**

22 44. Plaintiff repleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
25 that persons with disabilities are entitled to full and equal accommodations,
26 advantages, facilities, privileges, or services in all business establishment of
27 every kind whatsoever within the jurisdiction of the State of California. Cal.
28 Civ. Code § 51(b).

1 45. The Unruh Act provides that a violation of the ADA is a violation of the
2 Unruh Act. *Cal. Civ. Code* § 51(f).

3 46. Defendants' acts and omissions, as herein alleged, have violated the
4 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
5 rights to full and equal use of the accommodations, advantages, facilities,
6 privileges, or services offered.

7 47. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
8 discomfort or embarrassment for the plaintiff, the defendants are also each
9 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §
10 55.56(a)-(c).

11 48. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
12 set forth and incorporated therein, Plaintiff requests relief as set forth below.
13

14 **PRAYER:**

15 Wherefore, Plaintiff prays that this Court award damages and provide
16 relief as follows:

17 1. A Declaratory Judgment that at the commencement of this action
18 Defendants were in violation of the requirements of the ADA due to
19 Defendants' failures to take action to ensure that its websites were fully
20 accessible to and independently usable by hearing-impaired individuals,
21 including providing closed-captioning on all video content containing audio
22 elements.

23 2. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
24 enjoining Defendants from violating the ADA with respect to its website.
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1 3. Damages under the Unruh Civil Rights Act § 51¹, which provides for
2 actual damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

5 Dated: September 4, 2020

6 CENTER FOR DISABILITY ACCESS

7 By:



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9
10 Russell Handy, Esq.
11 Attorney for Plaintiff

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27 ¹ Note: the plaintiff is not invoking section 55 of the California Civil Code and
28 is not seeking injunctive relief under the Disabled Persons Act at all.